

# SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Bowen Analyst: LuAnna Hass Bill Number: SB 1841

Related Bills: See Prior Analysis Telephone: 845-7478 Amended Date: June 23, 2004

Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** Electronic Monitoring Of Employees

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended \_\_\_\_\_.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

☒ AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as amended June 8, 2004.

☒ FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO \_\_\_\_\_.

☒ REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED June 8, 2004, STILL APPLIES.

OTHER - See comments below.

## SUMMARY

This bill would allow employers to engage in electronic monitoring of employees after providing notice to the employees.

## SUMMARY OF AMENDMENTS

The June 23, 2004, amendments would:

- Clarify that an employer may not intentionally engage in electronic monitoring of an employee until notice has been provided to the employee.
- Remove language stating that an employer would be liable for a civil penalty and an employee would be allowed to file a civil action under the Labor Code Private Attorneys General Act of 2004 for violating the provisions of this bill.

For convenience, the Implementation Considerations from the department's analysis of the bill as amended June 8, 2004, are included below. The remainder of the department's analysis of the bill still applies.

## POSITION

No Position.

Board Position:

<input type="checkbox"/> S	<input type="checkbox"/> NA	<input checked="" type="checkbox"/> NP
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input type="checkbox"/> PENDING

Legislative Director

Date

Brian Putler

7/6/04

## **ANALYSIS**

### **IMPLEMENTATION CONSIDERATIONS**

FTB is charged with collecting, maintaining, and protecting the privacy of taxpayer information. As such, FTB engages in extensive electronic monitoring of employee activities. FTB has established a notification practice that includes: 1) an annual confidentiality statement, 2) a security pamphlet, 3) an electronic security banner that is presented prior to any individual gaining network or system access, and 4) annual computer-based security training. If FTB is required to specifically identify the kinds of information that will be obtained through its electronic monitoring, the systems and procedures to protect the privacy of taxpayer information and cashiering of receipts could be compromised. For example, by providing the notice information required by this bill, employees could evade detection of unauthorized access to taxpayer information or theft of taxpayer checks. Additionally, an employee, or any other individual provided with such information, could use the monitoring information potentially to design and launch a successful and undetected system attack. The author may wish to consider providing an amendment that provides that it is not the intent of the bill to prevent a public agency from performing its statutorily mandated mission, such as protecting confidential taxpayer information.

The term “material change” in an electronic monitoring practice is subject to multiple interpretations, which may lead to disputes between employees and employers. Clarification of the author’s intent about this provision may help in administering this provision of the bill.

### **LEGISLATIVE STAFF CONTACT**

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